

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

TAWANNA K. CRABB,
Appellant,

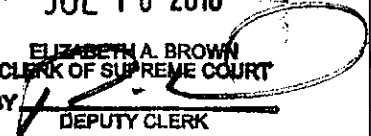
vs.

GREENSPUN MEDIA GROUP, LLC, A
NEVADA LIMITED LIABILITY
COMPANY; LAS VEGAS SUN, INC., A
NEVADA CORPORATION; DANA
GENTRY, AN INDIVIDUAL; AND JON
RALSTON, AN INDIVIDUAL,
Respondents.

No. 71443

FILED

JUL 10 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

Tawanna K. Crabb appeals from a district court order granting summary judgment and a special motion to dismiss in a torts action. Eighth Judicial District Court, Clark County; James Crockett, Judge.

In her amended complaint, Crabb alleged that respondents Greenspun Media Group, LLC; Las Vegas Sun, Inc.; Dana Gentry; and Jon Ralston made false statements about her in a newspaper article, a television segment, and an internet blog. Based on that allegation, Crabb asserted claims against respondents for defamation per se, false light, negligence, and infliction of emotional distress. Respondents moved to dismiss Crabb's defamation per se claim under NRCP 12(b)(5) based on the relevant statute of limitations and the law-of-the-case doctrine, which they argued applied given the supreme court's decision in a prior appeal from the underlying matter. *See Crabb v. Greenspun Media Grp., LLC*, Docket No. 64086 (Order Affirming in Part, Reversing in Part and Remanding, September 16, 2014). As to Crabb's remaining claims, respondents brought a special motion to

dismiss, arguing that dismissal was required under Nevada's anti-Strategic Lawsuit Against Public Participation (anti-SLAPP) statutes.

The district court converted respondents' NRCP 12(b)(5) motion into a motion for summary judgment and granted it, reasoning that Crabb's defamation claim failed on statute of limitations and law-of-the-case grounds. And the district court granted respondents' special motion to dismiss as to Crabb's remaining claims, concluding that they were entitled to relief under Nevada's anti-SLAPP statutes. This appeal followed.

On appeal, Crabb primarily directs her arguments at the portion of the district court's order granting respondents' special motion to dismiss her false light, negligence, and infliction of emotional distress claims under Nevada's anti-SLAPP statutes. To prevail on that motion, respondents were first required to demonstrate that Crabb was challenging "good faith communication[s] in furtherance of the right to petition or the right to free speech in direct connection with an issue of public concern." NRS 41.660(1);¹ *see also Delucchi v. Songer*, 133 Nev. ___, ___, 396 P.3d 826, 831 (2017) (setting forth the two-part test for evaluating special motions to

¹Nevada's anti-SLAPP statutes were amended in 2013 to clarify that their protections encompass good faith communications on issues of public concern. 2013 Nev. Stat., ch. 176, § 1-3, at 623-24 (effective October 1, 2013); *see also Delucchi v. Songer*, 133 Nev. ___, ___, 396 P.3d 826, 830-31 (2017) (discussing the 2013 amendments to Nevada's anti-SLAPP statutes). While the communications referenced in Crabb's complaint were published before the 2013 amendments, the amendments regarding what communications are protected govern Crabb's challenge to those communications as they apply retroactively. *See Delucchi*, 133 Nev. at ___, 396 P.3d at 830-31.

dismiss under Nevada's anti-SLAPP statutes). If respondents succeeded in making that threshold showing, then the burden of production shifted to Crabb. See *Delucchi*, 133 Nev. at ___, 396 P.3d at 831.

Here, the district court determined that the challenged communications were protected under Nevada's anti-SLAPP statutes on the ground that, as relevant here, they addressed issues of public interest and were truthful or made without knowledge of their falsehood. See NRS 41.637 (defining the phrase "[g]ood faith communication in furtherance of . . . the right to free speech in direct connection with an issue of public concern" to include "[c]ommunication[s] made in direct connection with an issue of public interest . . . which [are] truthful or . . . made without knowledge of [their] falsehood"). Insofar as Crabb challenges that determination based on *Shapiro v. Welt*, 133 Nev. ___, 389 P.3d 262 (2017), which set forth guiding principles for determining whether a communication was made in direct connection with an issue of public interest, we discern no basis for relief.

In particular, each of the challenged statements raised questions of judicial integrity, which is undoubtedly a matter of public interest under the principles set forth in *Shapiro*, see 133 Nev. at ___, 389 P.3d at 268 (explaining that a matter of public interest is, among other things, "something of concern to a substantial number of people"). And while Crabb baldly asserts that the challenged statements were false and further contends that she told respondents to conduct additional research, the record is devoid of any evidence to demonstrate that the district court incorrectly determined that respondents satisfied their initial burden of showing that those statements were either truthful or made without

knowledge of falsehood. *See id.* at ___, 389 P.3d at 267 (explaining that NRS 41.637's use of the phrase "made without knowledge of . . . falsehood" simply means that "[t]he declarant must be unaware that the communication [wa]s false at the time it was made").

As to the second prong of the anti-SLAPP analysis, the district court found that Crabb failed to meet her burden on the basis that she did not establish, by prima facie evidence, a probability of prevailing on the merits of her claims.² Initially, Crabb contends that, before ruling on respondents' anti-SLAPP motion, the district court should have allowed her to conduct discovery under NRS 41.660(4), which requires the district court to permit the plaintiff to conduct discovery while an anti-SLAPP motion is pending under certain circumstances.³ But because Crabb did not move to conduct limited discovery in accordance with NRS 41.660(4) below, she

²NRS 41.660(3) sets forth the burden that the plaintiff must satisfy to avoid dismissal under Nevada's anti-SLAPP statutes. That burden has evolved through legislative amendment. *See* 1997 Nev. Stat., ch. 387, § 6, at 1365-66 (effective October 1, 1997); 2013 Nev. Stat., ch. 176, § 3, at 623-24 (effective October 1, 2013); 2015 Nev. Stat., ch. 428, § 13, at 2455-56 (effective June 8, 2015). Crabb cites the 2013 amendment to NRS 41.660(3) and argues that it only required her to present prima facie evidence in support of her claims. Because that is the burden of proof that the district court applied, it is unnecessary for us to decide which version of NRS 41.660(3) governed here.

³The Nevada Legislature provided for this limited discovery procedure in its 2015 amendment of NRS 41.660. 2015 Nev. Stat., ch. 428, § 13, at 2455-56 (effective June 8, 2015). Although Crabb commenced the underlying proceeding before that amendment, we need not determine whether it applies retroactively because we conclude that she waived any request for limited discovery.


waived this argument on appeal. *See Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) (“A point not urged in the trial court . . . is deemed to have been waived and will not be considered on appeal.”). And while Crabb also baldly asserts that she established each element of her false light, negligence, and infliction of emotional distress claims, we decline to consider that assertion because she failed to support it with cogent argument as to how the evidence in the record was sufficient to establish the elements of her various claims. *See Edwards v. Emperor’s Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (declining to consider issues that are not supported by cogent argument).

To overcome the foregoing, Crabb also contends that the supreme court’s decision in Docket No. 64086 precluded the district court from dismissing her false light, negligence, and infliction of emotional distress claims. But the supreme court’s decision in that case did not address the viability of these claims under Nevada’s anti-SLAPP statutes. *See Crabb*, Docket No. 64086 (explaining that the failure of Crabb’s defamation claim was not dispositive of her false light and infliction of emotional distress claims and that her negligence claim was not derivative of her defamation claim). Thus, given the foregoing, we conclude that Crabb failed to demonstrate that reversal is warranted as to the dismissal of her false light, negligence, and infliction of emotional distress claims.

Lastly, insofar as Crabb disputes the portion of the district court’s order granting respondents summary judgment on her defamation claim, she fails to address the propriety of the court relying on the relevant statute of limitations and the law-of-the-case doctrine as the basis for its decision. As a result, Crabb failed to demonstrate that the district court

erred in granting summary judgment as to her defamation claim. *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005) (reviewing a district court order granting summary judgment de novo). Thus, given the foregoing, we affirm the district court's order granting respondents summary judgment as to Crabb's defamation claim and granting respondents' special motion to dismiss Crabb's remaining claims.⁴

It is so ORDERED.⁵


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. James Crockett, District Judge
Tawanna K. Crabb
Sylvester & Polednak, Ltd.
Durham Jones & Pinegar/Las Vegas
Campbell & Williams
Eighth District Court Clerk

⁴Having reviewed Crabb's remaining arguments, we discern no basis for relief.

⁵The Honorable Abbi Silver, Chief Judge, voluntarily recused herself from participating in the decision of this matter.